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ABSTRACT

This paper provides the text of a Congressional presentation outlining the position of the Council for Exceptional Children (CEC) concerning reauthorization of the Individuals with Disabilities Education Act (IDEA). The CEC believes that the fundamental rights and protections for children and their families, as well as the basic fiscal and administrative mechanisms contained in Parts A, B, and H of IDEA, are sound, have stood the test of time, and should remain untouched, while further refinements are needed in other areas. Issues and recommendations in the following areas are discussed: (1) outcomes and education reform (linkage with Goals 2000 and emphasis on improved student performance); (2) flow and use of funds (placement-neutral state funding, service-neutral allocation formulae, and funds for school-wide improvement); (3) assessment for eligibility (linkage between assessment and intervention, use of curriculum-based and performance assessments, and clarification of 3-year re-evaluation process); (4) definitions (additional diagnoses, primary grade categories, and serious emotional disturbance); (5) procedural safeguards (entitlement age, mediation, evaluation concerns, parental notification, attorney reimbursement, and refiling of hearing requests); (6) individualized education programs (relevancy, short-term instructional objectives, student participation in national and statewide assessments, family focus, and teacher participation); (7) culturally and linguistically diverse populations; (8) discretionary programs (Parts C through G); (9) transition; and (10) other issues (interagency agreements, discipline, private settings, adjudicated children, and data requirements). (JDD)

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ED 376 632

STATEMENT OF

THE COUNCIL FOR EXCEPTIONAL CHILDREN (CEC)

RESPECTING

REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

July 19, 1994

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Presented to:

The Subcommittee on Select Education and Civil Rights The United States House of Representatives

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THE COUNCIL FOR EXCEPTIONAL CHILDREN

INTRODUCTION
July 19, 1994

Mr. Chairman, and members of this subcommittee, we wish to thank you for this opportunity to convey the views and recommendations of the Council for Exceptional Children as you proceed in your consideration of reauthorization of the Individuals with Disabilities Education Act (IDEA).

The Nation is rapidly approaching the 20th Anniversary of the enactment of P.L. 94-142, the Education for All Handicapped Children Act of 1975 (Part B of the current Individuals with Disabilities Education Act (IDEA)). IDEA has provided children with disabilities with the fundamental right to a free and appropriate public education. As the Congress commences deliberation on the reauthorization of Parts C through H of IDEA, we are given an opportunity to evaluate how well all of the programs in IDEA are serving children with disabilities.

In that context, The Council for Exceptional Children believes that the fundamental rights and protections for children and their families, as well as the basic fiscal and administrative mechanisms contained in Parts A, B, and H of IDEA, are sound, have stood the test of time, and should remain untouched. At the same time, we believe that further refinements and fine-tuning may be in order so that children and their families may be better served in the context of evolving realities of the American school and community and the corresponding evolution known as school reform. CEC also believes that it is incumbent upon all of us to take full advantage of what we have learned in this 20-year period which might lead to improvements in the IDEA.

In essence, CEC believes that in this era of change in the American school, the IDEA must perform a dual role. On the one hand, it must reflect for children with disabilities the basic tenets and directions of national policy in education reform as expressed in the "Goals 2000: Educate America Act." We do not think this will be difficult, for we believe that IDEA, as enacted in P.L. 94-142, was good model legislation for school reform long before school reform was a national topic. At the same time, during this period of intense innovation and change in American education, IDEA must stand as the rock of stability in its declaration of the

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fundamental and unchanging rights and protections for children with disabilities and their families. We know that the IDEA can and will perform this dual function.

Mr. Chairman, knowing where you and your colleagues are in your deliberations, we have tried to be as specific as possible in our recommendations. Along with the major themes which we have just cited, you will observe that our testimony reflects at least two other major considerations: the need to further strengthen the family/professional partnership that is the essential foundation of the IDEA and the need to further enhance our focus for children who are culturally and linguistically diverse and their families.

I. OUTCOMES AND EDUCATION REFORM

A. The Individuals with Disabilities Education Act Should be Linked to Education Reform Efforts Implemented in Goals 2000: Educate America Act.

Issue: On March 31, 1994, the President signed the Goals 2000: Educate America Act. The disability community worked diligently to ensure students with special needs would be fully included in education reform efforts, including initiatives involving standards and assessments. IDEA needs to reflect the linkage between services for students with disabilities and the overall education goals that are applicable for all students.

Recommendation: A statement needs to be included in the purposes section of IDEA to reiterate Congress's intent to include children with disabilities in the Goals 2000 education reform programs. Services available to students with disabilities through IDEA will allow all students to aspire to the high standards set in Goals 2000.

B. The Statutory Intent Should be Strengthened to Emphasize that Part B has the Objective of Improved Student Performance Along with the Guarantee of FAPE (Free, Appropriate, Public Education).

Issue: The provisions of Part B need to place greater emphasis on the objective of improved student performance along with the guarantee of FAPE, with appropriate mechanisms for monitoring outcomes for students. This change would allow IDEA to run in tandem with the development of voluntary national content and performance standards for all students in the recently passed Goals 2000 legislation.

Recommendation: Increased emphasis must be placed on outcomes for students receiving the support of special education and supplementary aids and services. The purposes section of IDEA should be amended to emphasize the need for positive outcomes through the delivery of special education programs/services. The annual report to Congress on IDEA should also include information on how students with disabilities do after school.

II. FLOW AND USE OF FUNDS

A. The National Policy Should be Adjusted to Encourage State Special Education Funding Formulae to be Placement Neutral.

Issue: The Federal government distributes funds for the Part B State grants on the

basis of the number of children with disabilities in the State compared with the number of all children with disabilities. The Federal formula does not differentiate funding based on a child's placement in a regular classroom or in a different setting. Many States, however, do award funds to local education agencies based on the child's placement. In some cases the local education agency is allocated more funding for a child who is in a separate classroom for children with disabilities than for a child who is integrated into a regular classroom. Unfortunately, this may act as an disincentive for placing the child in the regular classroom.

Recommendation: CEC strongly believes that State funding formulae should be made to be "placement neutral". In that context, it should be reiterated that the federal funding formula is "placement neutral." IDEA clearly states that to the maximum extent appropriate a child with a disability should be educated with children who do not have disabilities. To award additional funding for placement of children with disabilities outside of the regular classroom works against the principles of IDEA. To the other extreme, incentives should not be provided for removal of students from special education programs. The Federal government should require States to ensure their State funding formula is "placement-neutral" in their State plan. To do so would not prohibit placements along the continuum.

B. Should a Shift be Made in the Allocation Formula from Current Relative Count of Children Served?

Issue: Funds under Part B are currently allocated to the states and to the Local Education Agencies (LEA's) and Intermediate Education Units (IEU's) within each state based upon the relative number of children receiving the support of special education and related services. This approach was developed in an era when a very large number of children were estimated to be wholly excluded by the schools or inappropriately served without necessary special education support. Thus, the current allocation arrangement was intended to encourage closing the gap between served and unserved. The argument is offered that at this point in history the allocation formula should become service-neutral, i.e. neither promoting nor discouraging the provision of special education services to children. Proponents of change have suggested, as one approach, the inauguration of a funding formula state-by-state based solely on each state's relative population of all children ages three to 21 years, with a similar approach for in-state allocation.

Implications: Those favoring a change argue that the current formula encourages labeling, fosters over-identification, and tends to inhibit flexibility in the utilization of special education funds. They further contend that a formula which rewards classification for special education purposes is wholly inappropriate in an era when preventing the need for special education support is a professional priority.

However there is a concern that such a shift would appear to penalize states which have worked diligently to identify and serve all students with disabilities, and further contend that the relatively small federal contribution to the total national special education budget makes over-identification in order to generate federal dollars improbable. There is also concern regarding the differentiation in the costs of serving children with specialized needs.

Recommendation: In this instance, we are frankly not prepared to make a formal recommendation at this time. Along with other implications already mentioned, a change in the allocation formula would carry dramatic fiscal implications, with a perception of winners and losers among the states. Further complicating the issue is the concern that a census approach could mean an under-count of the population of children in urban areas. However, we do recommend that the allocation formula remain a discussion item during reauthorization deliberations.

C. **Should Part B Funds Participate in "School-Wide" Projects Authorized Under Chapter One (Title I) of the Elementary and Secondary Education Act (ESEA)?**

Issue: This proposal has its origin in the provision for school-wide use of Chapter One, ESEA, funds under certain circumstances. A similar provision included in the Part B-supported program would operate in tandem with the Chapter One-supported program in a specific school. Both Part B and Chapter One funds would be directed to school-wide improvement, with the objective of benefiting special education students through needed school-wide instructional improvement, with the added objectives of promoting inclusive schools and discouraging unnecessary barriers in the in-school coordination of separate federal support programs.

Implications: Even those who agree in theory with allowing the school-wide approach do so with considerable caution. Concerns include: the need to maintain the visible audit trail of Part B funds; the need to insure that all students receiving the support of special education continue to have full implementation of their IEP's; the need to maintain clear accountability mechanisms for fulfillment of the school-wide objectives; the right to eligibility for special education programs, where appropriate; the need to have organized participation by parents, advocates and professional in the school-wide project; the need to insure appropriate professionals preparation for all persons involved in the school-wide enterprise, and the need to have a state/local match of special education dollars in order to make any school-wide effort financially feasible. Further, many argue that the school-wide approach should be authorized as a demonstration only in a fixed number of selected sites around the nation.

Recommendation: We are not prepared to offer a specific recommendation at this time. But we believe this proposal should continue to be discussed in the context of IDEA reauthorization, along with the overall objective of achieving a more effective interaction of Part B and Chapter One (Title 1) in the individual schools. The ability to use both funding sources to serve students school-wide may reduce duplication of effort, and contribute to the sharing of staff expertise, and to the most efficient use of human and financial resources.

III. ASSESSMENT FOR ELIGIBILITY

A. There Should be a Stronger Link Between Assessment and Intervention

Issue: P.L. 94-142 and subsequent reauthorizations of the Education of the Handicapped Act, including IDEA, have guaranteed a right to a free, appropriate public education (FAPE) for all students with disabilities. This right has led to an emphasis in federal and state regulations on a categorical model of special education which promotes assessment for eligibility determination and classification. Although it is imperative to continue this right to FAPE for all eligible students with disabilities, a number of concerns with current policy and practice have been persistent in the implementation of a categorical model of special education. For example, assessment to determine categorical eligibility often does not provide information that either identifies student competence or is directly linked to appropriate interventions or supports. In addition, many assessment measures used to determine categorical disabilities have not been found to be reliable or valid for the purpose for which they are used. The emphasis of assessment on determination of student eligibility for services also restricts the time that professionals can allocate to other essential activities.

Recommendation: Changes within IDEA should clarify the purpose and intent of the law to minimize the use of assessments to categorize children within the medical model, and instead to place an emphasis on the determination of eligibility and be based on the educational, emotional, and vocational needs of students and on assessment of student progress. Changes in the law as well as federal and state regulations could thus deemphasize the current "medical model," and clearly support a service delivery system that is driven by the identification of student competence, instructional need, and student growth.

B. There is a Need to Make Statutory or Policy Changes that More Clearly Support Functional, Curriculum-based, and Performance Assessments.

Issue: Re-conceptualization of the special education assessment process is

compatible with key concepts within the general education restructuring movement, accountability, and the increased emphasis on demonstrable student outcomes. It is also consistent with the knowledge that many of the standardized assessment instruments and procedures being used are not technically adequate for the purpose for which they are being used, nor are they linked to curriculum and instruction. Additionally, there exist numerous professional concerns regarding the inappropriateness of such standardized tests for culturally- and linguistically-diverse exceptional children.

Recommendation: CEC recognizes that functional, curriculum-based, and performance assessment instruments and procedures are currently allowed under current federal law and policy. However, there are words and phrases used in the federal regulations that seem to reinforce and support the use of standardized instruments and procedures; e.g., the requirement that tests be valid for the purpose for which they are used, etc. Perhaps a change in federal law is not needed; however, sometimes a re-statement of purposes of assessment and the range of possible alternatives can be beneficial to shifting "mindsets" and resulting practice. Rather than making a change in federal law, Congress could clarify the variety of possible assessment procedures in report language. It would seem important that inquiry regarding the special education assessment process be done at the same time that such inquiry is being carried out with other educational assessment procedures within the school restructuring process. The emphasis of assessment should be on identifying current functioning levels, educational needs, and assessing the impact of the program and services on students.

C. There is a Need to Clarify the 3-Year Re-evaluation Process.

Issue: The regulations governing the IDEA require a child with a disability who is receiving special education services to be re-evaluated every three years, or more frequently if conditions warrant, or if the child's parent or teacher requests an evaluation. Although the regulations do not specify the components of the re-evaluation, they do require the procedures to be based on the initial evaluation procedures. In practice, this has resulted in some confusion with schools conducting the same numerous assessments they initially administered to the child to find out if he or she was eligible for special education services.

Recommendation: CEC believes every child being served under IDEA should be evaluated for services during the annual IEP process. The three year re-evaluation, however, has often resulted in unnecessary eligibility testing of children with disabilities. Time that could be spent on instruction and learning is currently wasted on unnecessary repetitive testing. The regulations should be clarified to discourage schools from conducting repetitive testing unless specifically asked for by the parents or teacher. Correspondingly, parents should be allowed to waive

any particular test(s) at time of the re-evaluation. CEC does believe, however, that a more thorough evaluation should be conducted at natural transition points for the student. We urge Congress to consider requiring re-evaluations to be conducted at these transition points: at the 4th grade level, before entry into middle/junior high school, and before entry into high school.

IV. DEFINITIONS

A. Additional Diagnostic Definitions Should not be Added to the Law.

Issue: There seems to be a marked consensus in professional educational circles that no new diagnostic categories be added to the definition of the eligible population under the IDEA, with the point being made that more refined diagnoses are not appropriate for an educational law.

Recommendation: The contention is made that the existing categories are already too great in number, and that any further diagnostic refinements can be accommodated within the existing categories. Too much time is spent on the sorting process; and further diagnostic categorization runs counter to the inclusive school and community movement, and to the need to focus on the whole child.

B. Diagnostic Categories Should not be Required for the Primary Grades.

Issue: CEC has a strong preference for removing the federal requirement to report by diagnostic category those children receiving the support of special education. This may, however, not be the right moment to contemplate moving to a single definition of disability that would apply to all children in determining eligibility for special education support. We do believe, however, that a strong case can be made for allowing one broad category for the majority of children from kindergarten through the third grade. The same logic applies which allows the schools to use one broad category for the federal preschool program for children with disabilities. Namely, diagnostically-governed categorization for most children in their early childhood years is inappropriate and not helpful in determining appropriate instruction. CEC defines early childhood as birth through age eight, as does IDEA, Part C, the Early Education for Children with Disabilities Program.

The primary grades represent the time when a great many reading and behavior problems begin to develop; at this point they don't require designation of a diagnostic category. These problems, however, require immediate and effective intervention by trained educators. An increased focus on effective intervention in the early grades could avoid the need for special education support for many

children in the later years.

Recommendation: CEC recommends that the states be given the option of using for the majority of children ages six, seven, and eight the definition which they now have the option of using for children ages three, four, and five.

Permit us to quote that definition, Section 602(a)(1)(B) of IDEA:

> (i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and
> (ii) who, by reason thereof, need special education and related services.

C. The Term "Serious Emotional Disturbance" Needs to be Changed to "Emotional or Behavioral Disorder."

Issue: Use of the term "serious emotional disturbance" has resulted in a number of problems in efforts to serve the population of children who have emotional and behavioral challenges. "Serious emotional disturbance" is the only one of the ten categories of children eligible to receive IDEA services that includes the term "serious." Further, the regulatory definition of "serious emotional disturbance" is narrow, based on criteria that have never been supported by research on subtypes of children with emotional or behavioral disorders.

Recommendation: If children with disorders of this nature are to be accurately identified, so that they can access appropriate education and services, the term "serious emotional disturbance" must be changed in statute to "emotional or behavioral disorder." Characterized by behavioral or emotional responses so different from appropriate age or cultural norms that they adversely affect educational performance, "emotional or behavioral disorders" must involve exhibition of inappropriate responses in at least two different settings. The term "emotional or behavioral disorder" is less demeaning than the current "serious emotional disturbance" and would permit more accurate identification of children and youth with disabilities who require special interventions. This is also the recommendation of the Mental Health/Special Education Coalition.

V. PROCEDURAL SAFEGUARDS

A. The Age for the Entitlement of IDEA Services Should be Clarified.

Issue: Part B of IDEA states special education services must be provided for eligible students who are aged 3 through 21. It is unclear as to what "through 21" really means. This has created confusion in the provision of services.

Recommendation: There is general agreement that a clarification of the eligible age for Part B services is needed. The regulations should clearly state that the student will be eligible for services through the school year in which the student turns 21.

B. Mediation Should be Required as an Option for Parents Prior to the Initiation of Due Process Hearings or Court Cases.

Issue: The due process procedures in IDEA provide necessary protections for parents of students with disabilities. It is often, however, the only recourse parents have available to use in settling disputes with school officials. This has sometimes led to overly legalistic and costly proceedings. The due process procedures have in many cases caused some animosity between school officials and parents. Parents should have the right to choose to have their differences with the school settled through mediation.

Recommendation: CEC believes States should be required to make mediation available to parents. While mediation is now available to parents in some States, it is not available to all. By amending IDEA to require mediation be made available, all parents would be allowed to choose an alternative way of settling disputes. While CEC strongly believes that parents have the right to proceed directly to due process proceedings, mediation should be made available to those who wish to try to work out their differences with the school. Safeguards, however, would have to be put in place to assure parents who choose mediation that they can proceed to the formal due process procedures at any time. Parents must also be assured that mediation does not delay the established timetable for resolution of due process procedures.

IDEA may also need the inclusion of Sec. 513 of the Americans with Disabilities Act which reads " Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under this Act." The inclusion of this provision would help to encourage other means of conflict resolution between parents and schools.

C. Parents Should be Required to Meet with School Officials to Discuss Concerns About the Evaluation Performed by School Officials Before Obtaining an Independent Evaluation.

Issue: Under IDEA, parents who disagree with the school's evaluation of a student may obtain an independent evaluation at school district expense if the school district's evaluation has been determined to be inappropriate or discriminating. Parents' rights to an independent evaluation should be maintained. However, if the school has an opportunity to address the concerns of parents before an independent evaluation is sought, additional funds may be saved. In addition, by requiring parents to meet with school officials before obtaining an independent evaluation, parents can be provided an opportunity to air grievances or concerns about the school's evaluation. A meeting of this nature would also provide school officials with an opportunity to address these concerns, and may prevent the need for an independent evaluation.

Recommendation: By requiring parents to meet with school officials before obtaining an independent evaluation, schools and parents are provided a chance to work together to address issues regarding the evaluation of a student. If nothing is resolved during the meeting, parents can still obtain an independent evaluation at school district expense. Requiring a meeting between parents and school officials facilitates communication between the two parties and may resolve any disagreement.

D. Parental Notification Requirements Should be Streamlined.

Issue: The current parental notification requirements under IDEA require too much paperwork, consume large quantities of valuable instructional time and can act as a disincentive for progressive educational programs. In addition, current approvable forms (e.g. parental rights, in special education) are too lengthy and often are not readable by the parents.

Recommendation: By streamlining parental notification requirements, schools would not be required to notify parents every time there is a change in the strategies used to implement the individualized educational program of a child. Teachers would be allowed the flexibility needed to vary the instructional approaches used to continue the individualizations of a child's education program without the bureaucratic disincentives. Parents will continue to be notified of any change in the child's identification, evaluation, and individualized education plan and placement but they will not be confused by the barrage of documents coming from the school for other related issues.

E. Schools Should not Have to Reimburse State/Federal Attorneys.

Issue: Protection and advocacy for students with disabilities is a necessary and much-needed component of IDEA. The Federally funded Protection and Advocacy Services (P. & A.'s) that exist in every state provide families with legal representation they might not otherwise be able to afford. The annual separate appropriation specifically for this legal representation enjoys widespread support from advocates from the disability community. The issue raised, however, is whether state/federal attorneys, already having been publicly funded, should also be entitled to taxpayer reimbursement of legal fees at the local level.

Recommendation: For state/federal attorneys to be reimbursed at the local level after already receiving public funds seems to be paying twice for the same service. With local school districts already strapped for funds, it does not seem fair to reimburse the legal fees of someone already being paid from the public purse. By changing the statute, schools would not have to reimburse state or federally funded attorneys but would continue to reimburse the costs of private attorneys.

F. The Immediate Refiling of a Hearing Request Regarding the Same Issue Should be Prohibited.

Issue: There is concern that after an expensive and time-consuming due process procedure in which a decision has been made, parents can immediately refile a hearing request regarding the same issue. This can lead to additional costs and time spent on an issue that the school and the parents have already addressed. After a hearing officer rules on an issue, neither party should be able to immediately start the process all over again. Parents are allowed to appeal the decision of the hearing officer and should take this route if they feel the decision is unjust.

Recommendation: A prohibition on the immediate refiling of a hearing request regarding an issue that was just decided would alleviate the unnecessary time and funds spent to decide the same issue. IDEA guarantees adequate protection for parents by allowing parents to appeal the hearing officer's decision.

VI. INDIVIDUALIZED EDUCATION PROGRAMS

A. The IEP Should Be Made More Relevant to Parents, Teachers, and the Learning Needs of Children.

Issue: Is the IEP, as it has evolved, as relevant as originally intended? Is it a meaningful document that explains the program provided to the student? Is it a

useful document for monitoring student progress? Is it a useful document for monitoring for state officials? Is it meaningful for parents? Is there real dialogue taking place in the development of the IEP? There seems to be consensus that the IEP for too many students is no longer meeting the original intent of the framers of the statute and has become cumbersome and, in many instances, meaningless paperwork.

Recommendation: CEC believes that the IEP is one of the cornerstones of IDEA. An argument can be made that a simplified IEP, which met the original intent of the law, would be more meaningful to teachers and parents. Such an IEP might also be a more useful document for monitoring purposes and for monitoring student progress. A revised IEP might also promote the original intended dialogue between parents and school personnel and result in truly individualized instructional programs being developed for students with disabilities. Of course, this revised IEP would contain the needs of the child, the special education programs and services provided, and the projected initiation and termination of these services.

B. The Required Components of the IEP Document Should be Changed by Eliminating the Requirement that each Annual Goal Have Two Short-Term Instructional Objectives.

Issue: When the law and its implementing regulations were originally passed, there was a strong belief that we needed to include in the IEP document not only the current level of a student's performance but also a series of annual goals and corresponding short-term instructional objectives. There are a number of educators who strongly believe that the current focus on student performance and annual goals remain critically important within the IEP. However, there appear to be a majority who believe the short-term instructional objectives are not as valuable as originally anticipated and could (and should) be dropped from the statute and regulations. It appears that both teachers and parents do not gain enough value from the inclusion of short-term instructional objectives to make them worth including in the IEP process, due to the IEP teams' time and effort involved to develop them.

Recommendation: Eliminating this requirement will significantly increase the time educators have to be able to teach, while at the same time helping significantly to reduce the labor-intensive paperwork. Some educators believe eliminating the short-term instructional objectives will improve the communication process between parents and school officials, since they will not be required to focus on the instructional objectives that many parents find confusing and of limited value. The IEP should focus on the annual goals (written in measurable terms) and a clear articulation on what the special education and related services will be to achieve

those goals.

C. IEPs Need to Specify the Extent of Student Participation in National and State-wide Assessments.

Issue: Many children with disabilities have been uniformly excluded from participating in the various national and state-wide assessments administered to their non-disabled classmates. Various reasons account for these exclusions including vague participation guidelines, unwillingness to accommodate exceptionalities, high-stakes incentives for exclusions, and altruistic motivation. As a result of these exclusions, assessment results are skewed, not accurately portraying the diversity of our school populations.

Recommendation: The purposes of developing an IEP include team determination of relevant instructional goals and identification of specific educational services needed to achieve the stated goals. In line with these purposes, CEC recommends the addition of a statutory requirement to the IEP - a statement describing the extent of student participation in national and state-wide assessments. Those individuals assembled to develop an IEP would be required to consider the appropriateness of student participation, as well as to formalize the accommodations or modifications necessary for each child's assessment administration. CEC strongly believes that such accommodations or modifications should accurately reflect those provided to the child in his or her daily instructional program. Addition of this assessment participation statement on the IEP would do much to increase the number of students with disabilities who participate in nation-, state- and district-wide assessments, thus providing the students, the schools, and the public with more accurate data, representative of all children.

D. The Individualized Education Program (IEP) should be more Family Focused, Particularly for Children in the Elementary Grades.

Issue: Family involvement in the provision of special education and related services to children with disabilities has always been an essential underpinning if meaningful results for the student are to be achieved, particularly in the early childhood and elementary school programs. Special educators have always considered the family members to be their core partners in the special education enterprise. Further, one of the universal characteristics of school reform across the country has been the movement toward greater parent involvement in the neighborhood school, both from the standpoint of policy and overall monitoring of the school program and from the standpoint of involvement in the instructional program of their particular child.

Recommendation: One school of thought has been arguing that the Individualized Family Service Plan (IFSP) should eventually replace the IEP for all children. We do

not feel that this would be appropriate policy, since the IFSP focuses on an array of co-equal services and involves multiple agency jurisdiction. The IEP is school-based and focuses on special education and the necessary related services in order to make that special instruction possible and meaningful. However, we recommend that the underlying philosophy of the IFSP, which is centered on the strengths, needs, and concerns of both the child and the family, be built into the IEP. Further, we recommend that recognition of the cultural and linguistic diversity of families become a focus of the IEP, in keeping with the ever more varied tapestry of American families as we enter the 21st Century.

E. The Teacher(s) who Participates in the IEP Meeting Must Work with the Child on a Regular, Daily Basis.

Issue: Although the regulations clarify that the participants in a student's IEP meeting include "the child's teacher," it appears that in some cases, the teacher who attends the meeting is not necessarily one who has regular, daily contact with the student. There are a variety of reasons for this, but one commonly cited involves situations where a child is being served in a non-public setting.

Recommendation: In order to best represent the child's present performance and needs, the teacher or teachers who have regular, daily instructional contact with the student must be the individuals who fulfill the teacher requirement for IEP meeting participation. CEC recommends the addition of a regulatory note further clarifying the selection of the "child's teacher" as one who works with the child on a regular daily basis. Further, it is important to note that in many cases, more than one teacher may work with the child on a regular daily basis and be familiar with the student's disability. When and where appropriate, more than one teacher should participate in the IEP meeting, in that multiple sources strengthen the information sharing and decision making process. However, this recommendation should not be interpreted as requiring all teachers to attend a student's IEP meeting.

VII. CULTURALLY- AND LINGUISTICALLY-DIVERSE POPULATIONS

A. The Annual Report on IDEA Should be Required to Address the Issue of Disproportionate Representation of Children From Diverse Backgrounds in Special Education.

Issue: The question of disproportionate representation of children from culturally- and linguistically-diverse backgrounds, including limited English proficient students, in special education continues to be a major national concern. Periodic data surveys have shown higher percentages of minority children, particularly African-

American children, classified as needing special education services as compared to other children. However, there is a notable lack of hard data and information on the extent of the over- and under-representation and the causes. Moreover, there is little available data regarding issues of referral and identification for special education. The "Special Studies" section of IDEA (section 618) calls for a study that examines "(i) the factors that influence the referral and placement decisions and types of placements, by disability category and English language proficiency, of minority children relative to other children, (ii) the extent to which these children are placed in regular education environments, (iii) the extent to which the parents of these children are involved in placement decisions and in the development and implementation of the IEP and the results of such participation, and (iv) the type of support provided to parents of these children that enable these parents to understand and participate in the educational process." Unfortunately, this critical study has never been funded and policy makers still do not have necessary data on the numbers and percentages of children from diverse backgrounds in special education programs. In order to provide information on the issue of disproportionate representation, the *Annual Report to Congress on the Implementation of IDEA* should be required to address the issue.

Recommendation: By funding the study and requiring the *Annual Report* to include data on representation of culturally- and linguistically-diverse students in special education, federal policy makers, would provide educators and parents with crucial information on the identification of children with special needs. Regular annual information on the causes of disproportionate representation could lead to policy/practice changes that will not occur without the necessary data.

B. Additional Federal Resources Must Focus on Improving Instruction and Methodology for Educating Children with Disabilities who are Culturally- and Linguistically-Diverse.

Issue: Children with disabilities who are culturally- and linguistically-diverse have historically been subject to limited, and often inappropriate, instruction and services. While the few longitudinal studies conducted reveal very poor post-school outcomes, including exceptionally high unemployment for this population, only limited federal resources have been targeted to research, develop, and disseminate information on proven instructional practices and methodology.

Recommendation: In light of the challenge that lies before educators in addressing the unique needs of children and youth with disabilities who are culturally- and linguistically-diverse, CEC strongly recommends the dedication of Federal resources to focus specifically on effective instructional practices. While the need for data collection and statistical/causal research in the area of culturally- and linguistically-diverse children and youth with disabilities is key, so is the development and

dissemination of real-life practical strategy and methodology. Solid, proven strategy and methodology will assure the delivery of a free, appropriate education to those children with specialized linguistic and cultural needs. If, as the recent Goals 2000 education reform legislation promises, every student is to have a true opportunity to learn, the Federal government must take an active role in contributing to instruction which is appropriate and responsive to the needs of all students, including those of culturally- and linguistically-diverse backgrounds.

VIII. IDEA DISCRETIONARY PROGRAMS, PARTS C THRU G

A. Greater Flexibility should be Built into the IDEA Support Programs, Parts C through G.

Issue: CEC wishes to affirm the vital role that the support programs operated directly by the Office of Special Education Program (OSEP) have played through the years in providing research, development and technical assistance which as enriched the special education enterprise and benefited children in many demonstrable ways. Nonetheless, the contention is made that the support programs have become too fragmented over the past fifteen years, with many individually authorized programs and numerous earmarks of funds within the individual programs. It is argued that it is difficult for a recipient to put a significant funding package together toward achieving statewide systemic change and further argued that OSERS/OSEP is too constrained in meeting identified national needs by funding limitations. The situation is further exacerbated by the low appropriation level over many years.
Some would opt for a general review and reorganization of the support programs. While this may appeal to one's sense of organizational logic, it might not be a realistic undertaking. After all, all of these authorities were created to meet a genuine need, and CEC was involved in creating each and every one of them.

Recommendation: We recommend that applicants be allowed to make joint applications under more than one support program as long as the Congressional intent is met for each of the individual discretionary programs involved in the joint application. However, the devil is in the details, and much variation exists in the fine print of requirements for applications from program to program. We would be pleased to assist the Congress in achieving more uniformity of specific requirements.

We also recommend that the Congress enlarge the currently very modest authority and provide greater resources to allow OSERS/OSEP to provide individual states technical and other assistance to bring about systemic changes needed to bring individual states into greater compliance under federal and state law.

OSERS/OSEP should not simply police; it should be a helpmate. For instance, if a state is not effectively monitoring results for students, or is experiencing difficulty in implementing fully-supported inclusion, we recommend that you give the U.S. Department of Education a flexible resource to be of assistance. We further recommend that you require in the annual Report to Congress a recounting of how this resource was applied, and to what effect in the specific states.

B. Research Programs must Remain within Jurisdiction of the Office of Special Education Programs.

Issue: Research efforts in the education of individuals with disabilities, provided under IDEA, are essential to meeting the goals of the Act. The research and demonstration projects are unlike some other Education Department research grants, in that the IDEA grants stress practical research, aimed at direct application of the data and knowledge to the delivery of special education, most importantly, at the classroom level. These programs are administered by the Office of Special Education Programs, maintaining a strong connection between the research and the instructional components of special education and related services.

Recommendation: The authority for the IDEA research components must remain in the Office of Special Education Programs. This vital connection between instructional practice and related research must be maintained. Removal of the research in the education of children with disabilities component from the Office of Special Education Programs would jeopardize the link to applied research connections.

IX. TRANSITION

A. Lower the Age When Transition Plans are Required to be Developed.

Issue: Currently, a transition plan must be developed by the IEP team by the time a student is 16, or when determined appropriate for the individual, beginning at age 14 or younger. The majority of IEP teams, however, do not approach the subject of a student's transition from school into his or her adult life until the team is required to at age 16. Unfortunately, many students with disabilities drop out of school before they reach 16 and do not have transition plans.

Recommendation: Lowering the age for mandated transition planning will increase our ability to keep students with disabilities in school. Students will be better able to see and believe that they are learning skills that will lead to a job, to further education, and to living independently. As Congress made clear in the School-to-Work Opportunities Act, we need to prepare students much earlier for their

transition from school into the work place. CEC urges the Congress to amend IDEA to require the IEP team to develop a transition plan for students with disabilities beginning at age 14 or younger.

X. OTHER ISSUES

A. Statutes Need to Clarify and Strengthen Responsibilities and Accountability Related to Interagency Agreements.

Issue: There appears to be a great disparity among and between states regarding both the degree to which interagency agreements are in effect and the extent of efficacy of those agreements. In some states, there appear to exist effective interagency agreements, while in other states, few or no such agreements exist. In these latter situations, the schools, as holder of the "first dollar," are assuming the responsibility for, and the cost of, most or all related and transition services. The question centers on whether the IDEA and/or other statutes can or should be further strengthened to reflect shared responsibility, accountability and cost for wrap-around, related, and transition services.

Recommendation: Changes to the IDEA statute could strengthen the requirements for development and use of interagency agreements. While CEC recognizes that all agencies, including education, health, mental health, juvenile justice, and social services, are struggling with financial concerns, more effective interagency agreements can serve as a vehicle for sharing the fiscal, personnel, and administrative responsibilities. Further, we know that collaboration and cooperation between agencies are an effective method of service provision to children and youth with disabilities. Model efforts, such as those funded by the Education Department's Program for Children and Youth with Serious Emotional Disturbance and the Child and Adolescent Service System Program, or CASSP, supported by the National Institute of Mental Health, bear witness to the effectiveness of programs that "wrap" a comprehensive array of services around the child. If all children and youth with disabilities are to be provided a genuine opportunity to benefit from a seamless delivery of multi-agency services, statutory requirements for establishing, maintaining, and monitoring interagency agreements must be strengthened.

We also wish to reference the current Part H provisions for interagency programs of early intervention services. These policies and procedures provide a strong model for extending effective interagency agreements to all children and youth with disabilities.

B. Issues Related to School Discipline Should be Clarified.

Issue: Concern has been heightened by an increase in school violence. As more students with disabilities are educated in regular classrooms with their non-disabled peers, teachers and school administrators are concerned that there appear to be two sets of rules regarding student behavior and discipline. In addition, schools are increasingly trying to take strong measures to address school violence but believe that they may not apply the same disciplinary measures to students with disabilities.

Recommendation: Resolution of this issue would promote inclusionary practices since building administrators would be more willing to include students on their campus if they believe they retain the right to determine appropriate discipline. Increased school safety would benefit all students and school personnel. It may be argued that the violent behavior which is of concern today was not the type of behavior considered at the time of the framing of P.L. 94-142 and that differentiated strategies are needed to address new problems. There will need to be great care exercised, however, in framing differentiated strategies to ensure that the original concerns of behavior related to the disability and perhaps not within the student's control are still appropriately addressed. There is a potential for disciplinary measures to be used in such a way that students with disabilities are, once again, denied a free and appropriate education.

Specifically, CEC recommends that the pendency provision contained in the procedural safeguards section of IDEA (Sec. 615, (c)(3)) be reviewed with respect to a student who poses a clear and continuing danger to himself or others. Such a review, however, must be sensitive to applying the strongest possible safeguards to protect everyone involved, particularly students and their families. Further, such a review of the statute requires detailed exploration and dialogue, and should not be finalized any earlier than Congressional reauthorization of the IDEA in the next calendar year.

C. School District Responsibilities Need to be Clarified for Students Being Served in Private Settings (not publicly placed in private settings.)

Issue: There is confusion regarding the extent of responsibility of the public schools to students who qualify for special education and related services and who are attending private schools. In some states/LEAs, there appears to be an understanding that the student can receive benefit up to the dollar amount generated from federal dollars. In other states/LEAs, there appears to be an understanding that the student shall receive the same benefits as he/she would if attending public schools. In all cases, there is a lack of clarity about the definition of "genuine opportunity."

Recommendation: As the system is currently operating, there appears to be considerable disparity, depending on geography, as to the special education and related services benefits a student enrolled in private school is entitled to receive. Because this places *parents in the potential role of "shopping"* for appropriate services, clarification and more uniform application of the statute and regulation would benefit parents and students. Clarification would also benefit all parties by reducing the potential for litigation.

Numerous OSERS policy letters, as well as the Education Department's amicus brief in the recent Tribble v. Montgomery Co. (AL) Board of Education Circuit Court of Appeals case have made clear, in the ED interpretation, that statue and regulation do not make an individual entitlement to services for parentally-placed private school students with disabilities. However, under regulation school districts do have an obligation to provide benefits to a class of individuals. Clarification of these interpretations in both statute and regulation is necessary for practical application of this provision.

D. There is a Need to Focus Increased Resources on Adjudicated Children and Youth who have Disabilities.

Issue: Over the course of one year, 450,000 delinquent youth in the US are placed in juvenile detention centers and state training schools, while another 300,000 spend some time in adult jails. Children and youth with a variety of disabilities constitute a considerable number of those served by the juvenile corrections system. The relationship between youth identified as having learning disabilities, mental retardation, and behavior disorders and juvenile delinquency, though not causal, is strong, up to 60% of youthful offenders in certain correctional facilities have been enrolled previously in special education programs in public schools. Unfortunately, the numbers of incarcerated youth are growing. The incarcerated population in state juvenile facilities increased 14% over a five year period. Further, recent longitudinal research data reflect poor outcomes for students with disabilities who have been incarcerated, including low rates of high school completion and limited employment success.

Recommendation: While the statistics appear bleak at first glance, it is important to recognize that many innovative, effective models for serving adjudicated youth with disabilities show great promise. Practices that support meaningful special education programs in juvenile correction facilities include functional assessments, curricula and instruction; transition services; and collaborative linkages among community agencies. However, without a greater investment in these innovative models and practices, incarcerated youth with disabilities may continue to struggle. Additional resources must be dedicated to both research and instruction of this troubling population.

E. The Annual Data Requirements of the Federal Government Should be Reduced/Streamlined.

Issue: The contention is made that the federal government is literally burying the states and localities under annual data requirements, with costs in terms of human resources that should be redirected toward classrooms and instruction.

Recommendation: There is a need to distinguish between data which government "needs to have" in contrast to what it would be "nice to have". Annual data reporting requirements should be restricted to the bottom lines of improved student performance for each student and the guarantee of procedural safeguards for students and their families. While it must be observed that it is not an easy task to distinguish data requirements imposed by the national government and those having their origin in the SEA's, during the reauthorization we must try to limit the data requirements to that data which is truly helpful in determining the effectiveness of special education. Attention to this issue, along with implementation of our recommendations for the IEP and re-evaluation, could reduce the paperwork which is hindering our teachers in the performance of their paramount responsibility, the provision of instruction (including time for planning, consultation and problem solving).

Professional Preparation

Intense discussion is occurring with respect to the best use of the federal resources available for the professional preparation of special educators as well as personnel in the related disciplines. Notable shortages in the needed work force continue to be reported by the states, with particular concern in areas such as teachers for children with behavior disorders and for the low incidence population, as well as related services personnel, especially physical therapists, and speech language therapists. The nation also continues to be challenged by the need for appropriate collaborative training of special and general education professionals as well as the need for effective interdisciplinary training.

Questions continue about whether the limited federal resource for professional preparation should be more tightly focused than is currently the case. Of related concern is the urgent need to strengthen the linkages between the local school districts, the state education agencies, and the nation's institutions of higher education with respect to both preservice training and continuing professional preparation. An important aspect of achieving better linkages is the need to breathe new life into the comprehensive system of personnel development (CSPD) which is required under IDEA for each of the states.

CEC has been engaged in an intensive dialogue with all interested parties respecting these and related issues, and continues to seek the advice of the involved divisions of CEC, such as the Teacher Education Division (CEC-TED). Though, we do not have specific recommendations at this time, we expect to shortly. We hope that the forthcoming recommendations will represent a solid consensus, and one which protects the good work which is on-going under the IDEA Part D grant program and at the same time improves the future federal role.

Early Childhood

CEC's Division on Early Childhood (DEC) continues to lead us in a discussion on the reauthorization of Part H. DEC has held public hearings and is still receiving input from advocates of early childhood development. One main issue of great concern is how to better facilitate the transition between the Part H program and the Preschool program. We are also looking at the Part H formula and the way funds are distributed. Advocates are struggling to reach a consensus on whether we should continue to distribute funds based on census figures or if we should be looking at other ways of funding Part H programs. Perhaps, we should be moving toward a per child allocation or use poverty data or some other criteria. We hope to have solid recommendations on the Part H program soon and will forward them as soon as possible.

Closing

In closing, Mr. Chairman, the Council wishes to state that your proven leadership on disability issues as chair of this House panel assures us that we will have a thoughtful and progressive reauthorization bill from the United States House of Representatives. CEC stands ready to provide you every resource at our command in the preparation of that legislation.